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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 09/766,908 | 01/22/2001 | Peter J. Dragotta | MWT-3 | 2512 |
| 1218 | 7590 | 12/30/2003 | EXAMINER | |
| CASELLA & HESPOS 274 MADISON AVENUE NEW YORK, NY 10016 | | | ROSENBERGER, RICHARD A | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 2877 | |

DATE MAILED: 12/30/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/766,908

Applicant(s)

DRAGOTTA, PETER J.

Examiner

Richard A Rosenberger

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 October 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 5-8 is/are allowed.
- 6) ☒ Claim(s) 1-4 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other:

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-2 are rejected under 35 U.S.C. 103(a) as being unpatentable over Takahashi et al (US 4,274,745) in view of Manique et al (US 5,523,560).

Takahashi et al shows an apparatus for optical inspection of liquid solutions comprising an inspection station (C in Figure 1) having an optical inspection means (26-30).. there is an indexable fixture (head pressing cap 16) for securely gripping the container, and means for moving the fixture into the inspection station. There is means to agitate the liquid in gripped container (B in figure 1) before it is moved into the inspection station, the agitation being operable to move extraneous material in the liquid and thereby facilitate the optical inspection. Since the agitation is down before the container is moved into the inspection station, dwell time in the inspection station is reduced.

Takahashi et al uses rotation to agitate the container to move extraneous material. It is known in the art that the container can be shaken by contacting it by a vibrator; this is taught by Manique et al, column 6, lines 39-43; Manique et al give two manners of this agitation, by using a vibrator or by rotating and inverting the container; the two are presented as alternatives, the use of the vibrator is taught by

that reference. Manique et al explicitly mentions vibrating it “prior to rotation”, thus the vibration taught is “without rotation or inversion”, As it is known to vibrate the container to agitate it for inspection, it would have been obvious to use a vibrator in the manner taught by Manique et al in the agitation of the container in the inspection of Takahashi et al, either prior to the rotation as explicitly taught by Manique et al. or alone if the vibration itself is sufficient to move the extraneous material, because this would eliminate the need for a rotating mechanism in addition to the vibrating one.

Claims 3 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Takahashi et al (US 4,274,745) in view of Manique et al (US 5,523,560) as applied to claim 2 above, and further in view of Krieg et al (US 4,902,137).

Takahashi et al uses an array of photodetectors to detect light scattered from extraneous material in the liquid; it is known that such detection can be done with a video camera; Krieg et al is an example of this. Krieg et al teaches using a colored filter in the light path (figure 3, lines 21-25).

Takahashi et al teaches agitating the liquid at a separate station prior to the inspection station. The reference does not teach or suggest “terminating the operation of the vibrator [or other agitation means] in the inspection station”

(instant claim 5) or "indexing the fixture into an inspection station while terminating the vibrating" (instant claim 6); but required the agitation be stopped prior to the movement into the inspection means. Thus claims 5 and 6-8 are allowable.

The remarks filed 1 October 2003 have been considered. Due to the newly cited reference (Takahashi et al) the remarks are largely moot.

The Manique et al reference clearly teaches that one can "shake or agitate the container ... by contacting the container with a vibrator". It is correct that Manique et al also discloses another means of agitating the container, but that there is another disclosed manner of agitation does not remove the use of a vibrator from the teaching of the reference or from the collective knowledge of those in the art. Manique et al also teaches using the vibrator "prior to rotation"; claim 1 does not require that there be no rotation of the container, only that there by, prior to the inspection, agitation which includes "a vibrator for vibrating the container ... without rotation or inversion"; the vibrator of that reference at least obviously vibrates the container without rotation of inversion", claim 1 allows for subsequent rotation either at or prior to movement into the inspection station; even with the rotation being done at the inspection station the vibration, by stirring up the extraneous material, would facilitate a short dwell time as less rotation would be needed to insure the movement of the extraneous matter. Also, as noted above, if

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the vibration is itself sufficient to move extraneous matter for detection, omitting the subsequent rotation would have been obvious to reduce complexity, cost and to speed up the inspection process.


Takahashi et al (US 4,158,625), like Takahashi et al applied above, teaches agitation by rotating the containers prior to movement into the inspection station. Takahashi et al '625 states that the container are rotated by the rotary agitators (15, 15') and "are brought to a standstill at the detection positions"; while this teaches stopping the agitation "in the inspection station", it is rotary agitation at a separate location which will tend to persist on its own until stopped, and thus vibratory agitation by a vibrator at the agitation position would not halted at the inspection position, but prior to that when the container left the agitation position.

Papers related to this application may be submitted to Group 2800 by facsimile transmission. The faxing of such papers must conform to the notice published in the Official Gazette, 1096 OG 30 (15 November 1989). The fax number is (703) 872-9306

Any inquiry concerning this communication or earlier communications from the examiner should be directed to R. A. Rosenberger whose telephone number is (703) 308-4804.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0956.

R. A. Rosenberger
15 December 2003



Richard A. Rosenberger
Primary Examiner